TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 71

GEORGE DE VEAU, APPELLANT,

vs.

JOHN M. BRAISTED, JR., AS DISTRICT ATTORNEY OF RICHMOND COUNTY.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED MAY 22, 1959
PROBABLE JURISDICTION NOTED OCTOBER 12, 1959

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INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., NOVEMBER 12, 1959

[fol. 1]

IN NEW YORK SUPREME COURT
APPELLATE DIVISION—SECOND DEPARTMENT

GEORGE DE VEAU, DANIEL LOWERY and DAVID HONAN, individually and as members of Local 1346 of the International Longshoremen's Association (Ind.) and on behalf of all other members of Local 1346 of the International Longshoremen's Association (Ind.), Plaintiffs-Appellants,

against

JOHN M. BRAISTED, JR., as District Attorney of Richmond County, Defendant-Respondent.

STATEMENT UNDER RULE 234

This is an action commenced in the Supreme Court of the State of New York, County of Richmond, for a declaratory judgment.

This action was commenced by service of a summons and complaint on the 5th day of February, 1957. The said pleadings were annexed to an Order to Show Cause signed by Mr. Justice Baker on the 5th day of February, 1957, for an injunction *pendente lite*.

The defendant above named by notice of motion, dated and served on February 7, 1957, cross moved for judgment dismissing the complaint, or in the alternative, judgment [fol. 2] on the pleadings and served his answer at the same time.

The plaintiffs joined in the motion for judgment on the pleadings.

By order made and entered on the 27th day of September, 1957, plaintiffs' motions for injunction *pendente lite* and judgment on the pleadings were denied, and the defendant's cross-motion to dismiss the complaint was granted and granted judgment on the pleadings.

The plaintiffs appeal from so much of the order that denies their motion for judgment on the pleadings and grants the defendant's cross-motion.

The names of the parties are as above set forth.

The plaintiffs appear by Thomas W. Gleason, as their attorney.

The defendant appears as attorney *pro se*.

There has been no change of parties or attorneys since the commencement of the within action.

[fol. 3]

IN SUPREME COURT, STATE OF NEW YORK

COUNTY OF RICHMOND

[Title omitted]

NOTICE OF APPEAL—October 7, 1957

Sir:

Please take notice, that the plaintiffs above named hereby appeal to the Appellate Division of the Supreme Court, Second Department, from the order made in the above entitled action and entered in the office of the Clerk of the County of Richmond, the 27th day of September, 1957, denying the plaintiffs motion for judgment on the pleadings and granting the motion of the defendant to dismiss the complaint of the plaintiffs and further granting the defendant's motion for judgment on the pleadings and this appeal is [fol. 4] taken from the whole and from each and every part of said order.

Dated: October 7, 1957.

Yours, etc.,

Thomas W. Gleason, Attorney for Plaintiffs, 80 Broad Street, New York 4, N. Y.

To: John M. Braisted, Jr., as District Attorney of Richmond County.

Clerk of the County of Richmond.

IN SUPREME COURT OF NEW YORK

COUNTY OF RICHMOND

ORDER APPEALED FROM—September 27, 1957

Present: Hon. James C. Crane, Justice.

The above named Plaintiffs having moved this Court, by Order to Show Cause, for an injunction *pendente lite* against the District Attorney of Richmond County from enforcing the provisions of Section 8 of the Waterfront [fol. 5] Commission Act and the said District Attorney, by notice of motion having made a cross-motion to dismiss the complaint herein or in the alternative for judgment on the pleadings, and the plaintiffs joining in the latter portion of said cross-motion, and the said motion and cross-motion having duly come on to be heard.

And after hearing Thomas W. Gleason, Esq., attorney for the plaintiffs in support of said application and John M. Braisted, Jr., District Attorney of Richmond County, by Thomas R. Sullivan, Esq., Assistant District Attorney in opposition thereto and Irving Slonin, attorney for the Waterfront Commission of New York Harbor, by Richard J. Mozer, Esq., *amicus curiae*.

Now, upon reading and filing the Order to Show Cause, signed by Mr. Justice Baker on the 5th day of February, 1957, the affidavits of George De Veau and Thomas W. Gleason, duly verified the 29th day of January, 1957 and the 4th day of February, 1957, Respectively, and the summons dated February 4, 1957 and the complaint verified the 29th day of January, 1957, in support of Plaintiffs' motions, and the answer, duly verified the 7th day of February, 1957 and the notice of cross motion dated February 7, 1957, and all the papers herein, and the memorandum decision of this Court dated September 5, 1957, and due deliberation having been had thereon,

Now, upon motion of John M. Braisted, Jr., District Attorney of Richmond County, by Thomas R. Sullivan, Esq., Assistant District Attorney, it is,

Ordered, that the application of the plaintiffs' for an injunction *pendente lite*, be, and the same hereby is, in all respects denied. And it is,

[fol. 6] Further ordered, that plaintiffs' motion for judgment on the pleadings, be, and the same hereby is, in all respects denied. And it is,

Further ordered, that defendant's motion to dismiss the complaint herein is granted and the said complaint is dismissed. And it is,

Further ordered, that defendant be, and he hereby is entitled to judgment on the pleadings, in favor of said defendant.

Enter:

James C. Crane, County Judge of Richmond County assigned to the Supreme Court.

Granted September 27, 1957, Augustine B. Casey, Clerk.

IN SUPREME COURT OF NEW YORK

COUNTY OF RICHMOND

PLAINTIFFS' ORDER TO SHOW CAUSE—February 5, 1957

Upon the summons and verified complaint in this action and the affidavit of George De Veau sworn to the 29th day of January, 1957, and the affidavit of Thomas W. Gleason sworn to the 4th day of February, 1957, let the defendant above named by its attorney show cause before this Court at a Special Term, Part , thereof, to be held at the County Courthouse, in the Borough of Richmond, City of New York, on the 8th day of February, 1957, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made restraining [fol. 7] and enjoining defendant, its officers, agents and representatives, pending the outcome of this action from:

a. prosecuting or threatening to prosecute the plaintiffs, or any other person collecting dues on behalf of Local 1346, under the provisions of Section 8 of the Waterfront Commission Act in the event of the reinstatement of plaintiff George De Veau to his duly elected office.

b. interfering with or affecting in any manner the rights of the plaintiffs Daniel Lowery and David Honan and other

members of Local 1346 to select agents and representatives of their own choosing for the purpose of negotiating terms of employment, settlement of grievances and working conditions in general for the members of Local 1346, and granting the plaintiffs such further or other relief as to this Court may seem just and proper.

Sufficient cause appearing, let service of a copy of this order and the papers upon which it is granted, upon the defendant on or before the 6th day of February, 1957, be sufficient.

Dated: New York, N. Y., February 6th, 1957.

E. G. Baker, Justice of the Supreme Court of the State of New York.

[fol. 8]

IN SUPREME COURT OF NEW YORK

COUNTY OF RICHMOND

SUMMONS, READ IN SUPPORT OF PLAINTIFFS' MOTION—
Dated February 4, 1957

To the above named Defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorney within twenty (20) days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: February 4th, 1957.

Thomas W. Gleason, Attorney for Plaintiffs, Office & P. O. Address, 70 Pine Street, New York 5, New York.

In Supreme Court of New York

County of Richmond

Complaint, Read in Support of Plaintiffs' Motion

Plaintiffs, by their attorney, Thomas W. Gleason, as and for their complaint against the defendant, respectfully sets forth and alleges as follows:

1. At all of the times hereinafter mentioned, Local 1346, International Longshoremen's Association, (Ind.) (some-[fol. 9] times hereinafter called Local 1346) was and still is an unincorporated association of about 1,100 members affiliated with the International Longshoremen's Association, (Ind.) and it has offices located at 523 Bay Street, Borough of Richmond, County of Richmond, City and State of New York.

2. Local 1346 was and still is a labor union or labor organization duly organized, and functioning as such in New York and New Jersey, duly established by its constitution and by-laws, for the purpose of collective bargaining and dealing with employers in New York and New Jersey, concerning grievances, terms and conditions of employment, for other mutual aid and protection, and for protecting and vindicating the rights of employees in New York and New Jersey as conferred by Section 7 of the Labor Management Relations Act of 1947.

3. At all times hereinafter mentioned plaintiff, George De Veau was and still is a member of Local 1346, and that also prior to January 17th, 1957 was Secretary-Treasurer of Local 1346 having first been elected to such office in January, 1950 at an election supervised by the Honest Ballot Association, and then re-elected to such office on or about March 25, 1955 at an election supervised by the Honest Ballot Association. Plaintiff George De Veau as such Secretary-Treasurer was authorized to receive and collect all monies paid or payable to said Local 1346.

4. At all times hereinafter mentioned plaintiff, Daniel Lowery was and still is a member of Local 1346, Interna-[fol. 10] tional Longshoremen's Association (Ind.).

5. At all times hereinafter mentioned plaintiff, David Honan was and still is a member of Local 1346, International Longshoremen's Association (Ind.).

6. Defendant, John M. Braisted, Jr., at all times hereinafter mentioned was and still is District Attorney of the County of Richmond.

7. Upon information and belief on or about December 21st, 1956, William V. Bradley, President of the International Longshoremen's Association (Ind.), received a subpoena from the office of the defendant John M. Braisted, Jr., as a result of which said William V. Bradley called at said office and was there interviewed by Assistant District Attorney Thomas Sullivan. At that interview said Thomas Sullivan informed said William V. Bradley that plaintiff George De Veau had been convicted of a felony in the Court of General Sessions of the City, County and State of New York (attempted grand larceny) and that by reason of his conviction no person is permitted to collect dues for and on behalf of Local 1346 International Longshoremen's Association (Ind.) while said George De Veau remains an officer or agent of said Local 1346, and that if Local 1346 continued the services of said George De Veau as an officer or agent he would prosecute forthwith under Section 8 Waterfront Commission Act, any person who continued to collect dues for and on behalf of Local 1346 International Longshoremen's Association (Ind.).

[fol. 11] Said section provides as follows:

Section 8 Collection of funds for unions having officers or agents as felons.

> "No person shall solicit, collect or receive any dues, assessments, levies, fines or contributions within the state from employees registered or licensed pursuant to the provisions of this act for or on behalf of any labor organization representing any such employees, if any officer or agent of such organization has been convicted by a court of the United States, or any state or territory thereof, of a felony unless he has been subsequently pardoned therefor by the governor or other

appropriate authority of the state or jurisdiction in which such conviction was had or has received a certificate of good conduct from the board of parole pursuant to the provisions of the executive law to remove the disability.

As used in this section, the term "labor organization" shall mean and include any organization which exists and is constituted for the purpose in whole or in part of collective bargaining, or of dealing with employers concerning grievances, terms and conditions of employment or of other mutual aid or protection; but it shall not include a federation or congress of labor organizations organized on a national or international basis though one of its constituent labor organizations may represent persons so registered or licensed."

8. Upon information and belief the facts as to the alleged Commission of such felony are as follows: Some 36 years [fol. 12] ago, in the year 1920, plaintiff George De Veau, then 19 years of age, and one William Ellershamp converted an automobile, valued at $700.00, for the purpose of a "joyride." A few hours after thus illegally possessing said automobile they were apprehended by the police. An indictment was subsequently returned against them, alleging Grand Larceny in the First Degree and Criminally Receiving Stolen Property in the First Degree.

Thereafter on February 27, 1922, Plaintiff George De Veau and his then co-defendant in the Court of General Sessions of the City, County and State of New York, pleaded guilty to Attempted Grand Larceny in the First Degree. Eventually, on April 5, 1922, Plaintiff George De Veau received a suspended sentence from Honorable Otto A. Rosalsky, Judge of the Court of General Sessions of the City, County and State of New York, and was paroled for five years and during said time fully observed and complied with the conditions of said parole.

These details are set forth herein because of their bearing on the question of interpretation of Section 8 of the Waterfront Commission Act.

9. Plaintiff George De Veau was never before or thereafter convicted of a felony.

10. Upon information and belief, no other officer or agent of Local 1346 has ever been convicted of any felony in any Court of any state or territory thereof.

11. On or about January 17, 1957, William V. Bradley in his capacity as President of International Longshore-[fol. 13] men's Association (Ind.) suspended and in effect dismissed the Plaintiff George De Veau as Secretary-Treasurer of Local 1346. This dismissal was solely caused and occasioned by the aforesaid threat of Assistant District Attorney Thomas Sullivan.

Defendant William V. Bradley, on or about January 17th, 1957, sent a letter of dismissal to plaintiff, George De Veau, and a copy of which was sent to Assistant District Attorney Thomas Sullivan. The terms of which letter of dismissal were as follows:

"January 17, 1957

Mr. George De Veau,
Secretary-Treasurer,
Local 1346, I. L. A. (Ind.),
3401 Foster Avenue
Brooklyn, New York

Dear Secretary-Treasurer De Veau:

I have been informed by the District Attorney's Office of Richmond County that you have been convicted of a felony (attempted grand larceny) in the year 1920. I was also informed by that office that as long as you remain as an officer and agent of Local 1346, I. L. A., no person is permitted to collect dues under the Waterfront Compact. This being so, the International will be unable to acquire its per capita tax from Local 1346.

Under the circumstances, and because of the welfare of the organization, I am reluctantly forced to suspend you as an officer and agent of Local 1346. I regret [fol. 14] sincerely that I am compelled to take this action since you have rendered many years of efficient and loyal service to your Union and its members.

Fraternally yours,

WVB:ID"

12. Upon information and belief, William V. Bradley was compelled to discontinue the services of George De Veau because the receipts of dues from the members of Local 1346 was essential and vital to the Local and to the International in order for the officers of the Local and the International to perform their duties and functions; so that as to avoid an immediate clash with the District Attorney of Richmond County, William V. Bradley was compelled to terminate and deny to Local 1346 the services of George De Veau even though he was elected to his position by the membership of his Local and will be precluded from restoring plaintiff George De Veau to his elected position unless the relief which is sought in this action is obtained.

13. Plaintiff, George De Veau was at the time of the aforesaid termination of his services and for years prior thereto had been a capable and valuable agent and representative of Local 1346. He had developed and demonstrated exceptional capacity in performance of his functions as Secretary-Treasurer for Local 1346 and as a member and trusted executive and representative in matters requiring experience, judgment and tactful services particularly in disputes between labor and management. [fol. 15] The plaintiffs Daniel Lowery and David Honan desire to continue the services of plaintiff George De Veau as an agent and representative of Local 1346 and its members.

Plaintiff George De Veau himself is seriously damaged by the termination of his employment since he is deprived of the right to continue the performance, functions and services as a bargaining representative for which he has developed exceptional aptitude and also incurred the loss of substantial welfare benefits under the contract between the International Longshoremen's Association and the New York Shipping Association, and the further loss of pension rights under the New York Shipping Association-I. L. A. Pension Fund.

14. That at the time of the election for officers of Local 1346 in March, 1955, the membership and plaintiffs Daniel Lowery and David Honan of Local 1346 knew and were well

aware of the alleged felony ("joyriding") that Plaintiff George De Veau committed in his youth. The facts of such were made known in 1953 when George De Veau and one John Lineham individually and on behalf of Local 1346 commenced a suit in the United States District Court for the Southern District of New York (116 F. Supp. 401) against the then newly enacted Waterfront Commission of New York Harbor, the District Attorneys of the five counties of Greater New York, and the Attorney General of the State of New York to restrain the operation and enforcement of Section 8, Part III, Waterfront Commission Act of New York State (Laws of 1953, C. 882, 81). [fol. 16] The complaint was dismissed by the Court on the grounds that the plaintiffs had failed to establish any immediate likelihood of irreparable damage requiring the intervention of a Court of Equity.

Nevertheless with such knowledge, the plaintiffs Daniel Lowery and David Honan, and the membership of Local 1346, in March, 1955 overwhelmingly voted plaintiff George De Veau into office for a second term as Secretary-Treasurer and bargaining representative of Local 1346.

15. The provisions of Section 8 of the Waterfront Commission Act as construed by the defendant John M. Braisted, Jr. and as applied by the defendant with respect to the plaintiff George De Veau, are void because in conflict with Section 7 of the National Labor Relations Act, as amended; in particular Section 8 of the Waterfront Commission Act interferes with collective bargaining and denies employees the right to self-organization and the right to bargain collectively through representatives of their own choosing.

16. The provisions of Section 8 of the Waterfront Commission Act construed in connection with other provisions of the same statute and with reference to the object of that statute do not contemplate including as a "convicted of a felony", the suspended sentence upon which the basis of the complaint and threats of the Defendant District Attorney are predicated.

17. By reason of the doubts and disputes as to the application and interpretation of the aforesaid Section 8 of

[fol. 17] the Waterfront Commission Act and because of its importance to the plaintiffs Daniel Lowery and David Honan and the membership of Local 1346 in selecting agents, officers and bargaining representatives who are able and experienced in assisting their Local Union and its executive officers in performing their duties in the fulfillment of the objectives of the union, a judicial determination of such doubts and disputes are desirable and necessary in order that the rights and liabilities of the plaintiffs or any other member collecting dues for Local 1346 under Section 8 of the Waterfront Commission Act may be determined and adjudged.

18. In consequence of the aforesaid complaints and the aforesaid threat of prosecution made by the defendant John M. Braisted, Jr. and the further facts herein set forth, plaintiffs have suffered and will continue to suffer irreparable damage.

19. The plaintiffs have no adequate remedy at law.

Wherefore, the plaintiffs pray that a declaratory judgment be made and entered herein adjudging and decreeing:

1. That Section 8 of the Waterfront Commission Act in particular the provision that "No person shall solicit, collect or receive any dues, * * * if any officer or agent of such organization has been convicted by a court of the United States, or any state or territory thereof, of a felony * * *" is void because it conflicts with a statute of the United States known as the National Labor Relations Act, [fol. 18] more particularly Section 7 thereof.

2. That the conduct and suspended sentence of plaintiff George De Veau as hereinbefore described does not constitute being "convicted of a felony" within the meaning and contemplation of Section 8 of the Waterfront Commission Act.

3. For such other and further relief and the declarations of the rights and legal relations of the parties to this action as shall be necessary and proper in the premises.

And for further and consequential relief plaintiffs demand judgment that an injunction be issued perpetually restraining and enjoining the Defendant, John M. Braisted, Jr., as District Attorney for Richmond County and his agents, and representatives from:

(a) prosecuting or threatening to prosecute the plaintiffs, or any other person collecting dues on behalf of Local 1346, under the provisions of Section 8 of the Waterfront Commission Act in the event of the reinstatement of plaintiff George De Veau to his duly elected office.

(b) interfering with or affecting in any manner the rights of the plaintiffs Daniel Lowery and David Honan and other members of Local 1346 to select agents and representatives of their own choosing for the purpose of negotiating terms of employment, settlement of grievances and working conditions in general for the members of Local 1346.

[fol. 19] Plaintiffs further pray for an order restraining and enjoining the defendant from doing any of the acts above set forth during the pendency of this action.

Yours, etc.,

Thomas W. Gleason, Attorney for Plaintiffs, 70 Pine Street, New York 5, New York.

(Verified by George De Veau, a plaintiff, on January 29, 1957.)

IN SUPREME COURT OF NEW YORK

COUNTY OF RICHMOND

AFFIDAVIT OF GEORGE DE VEAU, READ IN SUPPORT OF PLAINTIFFS' MOTION

State of New York,
County of New York, *ss.*:

George De Veau, being duly sworn, deposes and says:

1. I am one of the plaintiffs in the above entitled action. I reside at 3406 Foster Avenue, Brooklyn, New York, and I am 55 years of age.

2. The facts as to the alleged commission of the felony alleged in the complaint, are as follows: Some 36 years ago, in the year 1920, I, then 19 years of age, and one William Ellersharnp converted an automobile, valued at [fol. 20] $700.00, for the purpose of a "joyride." A few hours after thus illegally possessing said automobile we were apprehended by the police. An indictment was subsequently returned against us, alleging Grand Larceny in the First Degree and Criminally Receiving Stolen Property in the First Degree.

Thereafter on February 27, 1922, I and my then co-defendant in the Court of General Sessions of the City, County and State of New York, pleaded guilty to Attempted Grand Larceny in the First Degree. Eventually, on April 5, 1922, I received a suspended sentence from Honorable Otto A. Rosalsky Judge of the Court of General Sessions of the City, County and State of New York, and was paroled for five years and during said time fully observed and complied with the conditions of said parole.

3. I started to work on the waterfront of the Port of New York in 1926 as a checker for the Ocean Steamship of Savannah Line. I worked for this Steamship Line until March 1942, when it went out of business because of this country's entry into World War II. The old Savannah Line was a coastwise line. I then had to seek employment away from the "beach" because of the inactivity. In 1943 I became a dock boss for United Port Service, (Norton-Lilly Line) and continued to work for it until December 1949 when I resigned to be a union official.

4. On or about January 2, 1950 I assumed the office of Secretary-Treasurer for Local 1346, I. L. A. (Ind.), after I had been elected by the membership of said Local at an [fol. 21] election conducted by the Honest Ballot Association for a term of five years.

5. In 1953, I, individually, and as Secretary-Treasurer of Local 1346, I. L. A. (Ind.), and John Linehan individually and as President of Local 1346, I. L. A. (Ind.), commenced a suit in the United States District Court for the Southern District of New York (116 F. Supp. 401) against

the then newly enacted Waterfront Commission of New York Harbor the District Attorneys of Greater New York and the Attorney General of the State of New York.

In that particular action a question was raised when the Attorney General of the State of New York, the constitutional officer charged with upholding the legislation, took the flat position that the statute did not apply to your deponent since he was not sentenced to a prison term and consequently was not a person convicted of a felony.

6. After the dismissal of the said proceeding and until 1955, I continued as an officer and agent of Local 1346, without any action ever taken by either District Attorneys of Greater New York or the Waterfront Commission. In March 1955, I was re-elected as Secretary-Treasurer. I had continued as an officer and was at the time of my dismissal, in charge of negotiations for Local 1346 for a new wage agreement with the New York Shipping Association. I am familiar with the working conditions throughout the port and I know the objectives which the men seek in a new wage agreement.

[fol. 22] 7. On or about January 18, 1957, I received a letter from William V. Bradley, President of the International Longshoremen's Association, (Ind.), in which I was suspended and in effect dismissed as Secretary-Treasurer of Local 1346. The reasons that I was actually dismissed was that other persons who collected dues for Local 1346 were in jeopardy of being prosecuted for a crime under Section 8 of the Waterfront Commission Compact, if they continued to collect dues. On the other hand, if no dues were collected, Local 1346 would go out of existence and the International Union would not be able to collect its per capita tax from Local 1346. William V. Bradley's hands were tied, there was nothing else he could do, if Local 1346 were to continue as a bargaining agent for its members.

8. At present I am unemployed and will continue to be such indefinitely. I have devoted the last 30 years of my life to working on the waterfront. I know of no other occupation, and because of my age, I will have difficulty in securing a job. This would be so even if I sought employment on the waterfront and I am able to be included in the

Longshoremen's Register by the Waterfront Commission. The new agreement between the New York Shipping Association and the International Longshoremen's Association is expected to have a seniority clause which will therefore greatly hamper my securing a job.

9. From the foregoing facts stated herein and also the allegations of the complaint, it is submitted that irreparable [fol. 23] damage will ensue to your deponent and Local 1346, and that because of facts, circumstances and laches involved herein, *i.e.*, my taking action in 1953; the opinion of the Attorney General of the State of New York that I do not fall within the Act; more than three years passing before the District Attorney took action even though his office had actual knowledge and was a party to the action in the Federal District Court (116 F. Supp. 401); and because the present agreement expires on February 12, 1957, and I believe my services would be of an asset to the membership, a temporary restraining order should be granted pending the outcome of the final determination of the Court.

George De Veau

(Sworn to January 29, 1957.)

IN SUPREME COURT OF NEW YORK

COUNTY OF RICHMOND

AFFIDAVIT OF THOMAS W. GLEASON, READ IN SUPPORT OF PLAINTIFFS' MOTION

State of New York,
County of New York, *ss.*:

Thomas W. Gleason, being duly sworn, deposes and says:

1. That he is the Attorney for the plaintiffs in the above action, and is familiar with the facts and circumstances of the above action.

2. That he, as attorney for Local 1346, accompanied William V. Bradley, President of the International Long-

[fol. 24] shoremen's Association and Thomas (Teddy) Gleason, General Organizer of said Association in response to a subpoena to the District Attorney's Office of Richmond County. That at said office an interview was had with Thomas Sullivan, an Assistant District Attorney. Mr. Sullivan informed us that George De Veau was a person who fell under Section 8, Waterfront Commission Compact and therefore while he acted as an officer and agent of Local 1346, I. L. A., any person who collected dues on behalf of Local 1346 was committing a misdemeanor.

It was explained to Mr. Sullivan that there was reasonable doubt as to whether George De Veau fell within the contemplation of Section 8, Waterfront Commission Compact. It was pointed out to Mr. Sullivan that in 1953, an action was commenced by George De Veau and a John Linehan, individually and on behalf of Local 1346, I. L. A., to test the constitutionality of said Section 8, and that that action was dismissed because the plaintiffs had failed to establish any immediate likelihood of irreparable damage requiring the intervention of a court of equity and because they had shown no basis for equitable relief. It was also pointed out that in the opinion of the Court that a question was raised when the Attorney General of the State of New York, the constitutional officer, charged with upholding the legislation, took the flat position that the statute did not apply to George De Veau since he was not sentenced to a prison term and consequently was not a person convicted of a felony.

Mr. Sullivan stated that he could not go along with this, and that he was of the opinion that George De Veau was "Convicted of a Felony."

[fol. 25] Mr. Sullivan emphasized the fact that the actual person charged with the violation under the law would be not necessarily George De Veau, but any person collecting monies on behalf of Local 1346 while George De Veau was an officer or agent.

3. Consequently, upon information and belief, George De Veau was suspended by William V. Bradley, President of International Longshoremen's Association in order that Local 1346 might continue to perform its duties, obliga-

tions and services to its members, and also that there would be no criminal prosecution of any innocent party who merely had a task and job to perform.

4. The facts and circumstances of this action certainly present a situation that casts a tremendous amount of doubt as to whether or not George De Veau comes within the contemplation of said Section 8. In a memorandum by the Attorney General, Nathaniel L. Goldstein, in opposition to a motion for Reargument which is on file in United States District Court for the Southern District of New York (Civil Action 88-154) *Linehan* v. *Waterfront Commission*, (116 F. Supp. 401) and which reads in part as follows: "* * * the various other statutory provisions of the Waterfront Commission Act manifest a legislative intent in the particular statutory provision involved in this litigation to exclude those who received a suspended sentence from the category of those convicted of a felony. As this court pointed out, the term involved in this discussion has varying meaning even in the same statute and there is no fixed signification which the Courts are bound to adopt, * * *". [fol. 26] From the foregoing it plainly raises the issue as to whether or not a crime is being committed by any person collecting dues while George De Veau acts as an officer or agent.

5. The District Attorney has waited over three years from the time that the *Linehan* case (116 F. Supp. 401) was commenced to the present date to take appropriate action. It may be just an incident, but it comes at a time when the International Longshoremen's Association is fighting for a good substantial agreement with the New York Shipping Association, and that representatives who were familiar and know the problems of the membership are needed to help secure a good contract. George De Veau has spent thirty years on the waterfront of New York, he knows the membership, he understands their problems and he is capable of acting as their collective bargaining agent. Now he is cast to the four winds because of the whims of the district attorney. George De Veau started an action in 1953 to acquire a determination of his right to remain as an officer of Local 1346, I. L. A., but this proved fruitless when the

proceeding was dismissed because George De Veau could not prove that any action to bar him had been commenced and also because the Attorney General took the position that George De Veau was not a felon within the contemplation of said Section 8. They allowed George De Veau to seek re-election as an officer of Local 1346 in the year 1955 and now almost two years from that election, the District Attorney in effect says to the membership of Local 1346, you can no longer have George De Veau represent you.

[fol. 27] 6. In order that justice be done to all parties concerned, and because of the laches of the defendant, along with the irreparable damage suffered by George De Veau and the members of Local 1346, I. L. A., and because of the position of the Attorney General of the State of New York, Nathaniel L. Goldstein in the *Linehan* case (*supra*) and because of the recent decisions on the meaning of the phrase "Convicted of a felony", all of which tend to establish a clear showing of probable success, your deponent asks this Court to grant a temporary injunction, pending the outcome of this action, restraining and enjoining the Defendant, John M. Braisted, Jr., as District Attorney for Richmond County and his agents, and representatives from:

a. prosecuting or threatening to prosecute the plaintiffs, or any other person collecting dues on behalf of Local 1346, under the provisions of Section 8 of the Waterfront Commission Act in the event of the reinstatement of plaintiff George De Veau to his duly elected office.

b. interfering with or affecting in any manner the rights of the plaintiffs Daniel Lowery and David Honan and other members of Local 1346 to select agents and representatives of their own choosing for the purpose of negotiating terms of employment, settlement of grievances and working conditions in general for the members of Local 1346.

No previous application for an injunction has been made to this Court or any other Court.

Thomas W. Gleason

(Sworn to February 4, 1957.)

[fol. 28]

IN SUPREME COURT OF NEW YORK

COUNTY OF RICHMOND

DEFENDANT'S NOTICE OF CROSS-MOTION TO DISMISS THE COMPLAINT OR, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS—Dated February 7, 1957

Sir:

Please take notice that upon the order to show cause for a temporary injunction dated February 5th, 1957, a cross motion will be made by the undersigned, pursuant to Section 117 of the Civil Practice Act upon the argument of the said motion for a temporary injunction returnable at a Special Term of this Court on the 8th day of February, 1957 at 10 A. M. in the forenoon or as soon thereafter as counsel can be heard (1) upon the complaint herein for an order pursuant to Rule 106 of the Rules of Civil Practice and judgment dismissing the complaint on the ground that it fails to set facts sufficient to constitute a cause of action, or (2) in the alternative, upon the complaint and answer herein for an order pursuant to Rule 112 of the Rules of Civil Practice for judgment on the pleadings dismissing the complaint insofar as it seeks an injunction on the ground that it fails to set facts sufficient to constitute a cause of action and declaring that plaintiff, George De Veau, has been convicted of a felony herein the meaning and contemplation of Section 8 of the Waterfront Commission Act, that the Local 1346 is a labor organization within the meaning and contemplation of said Section 8 and that Section 8 of the Waterfront Commission Act is not violative of Section 7 of the National Labor Relations Act and [fol. 29] for such other and further relief as to the Court may seem just and proper.

Dated: February 7th, 1957

John M. Braisted, Jr., District Attorney, County of Rich., Attorney for Defendant, Office & Post Office Address, County Court House, Staten Island 1, New York.

To: Thomas W. Gleason, Esq., Attorney for Plaintiffs, Office and Post Office Address, 70 Pine Street, New York 5, New York.

IN SUPREME COURT OF NEW YORK

COUNTY OF RICHMOND

ANSWER, READ IN SUPPORT OF DEFENDANTS' CROSS-MOTION —Verified February 7, 1957

The defendant, John M. Braisted, Jr., as District Attorney of the County of Richmond, answering the complaint herein:

(1) Denies that he has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 2 of the complaint except admits that Local 1346 is a labor organization which exists and is constituted for the purpose, in whole or in part, for col- [fol. 30] lective bargaining or of dealing with employees concerning grievances, terms and conditions of employment or of other mutual aid and protection.

(2) Denies each and every allegation contained in paragraph 7 of the complaint herein, except admits that in response to a subpoena issued from his office William V. Bradley and Theodore Gleason of the International Longshoremen's Association, Thomas W. Gleason, Esq., Arthur J. Celenti, Esq., and James J. McDermott Esq., their attorneys, were advised by Assistant District Attorney Thomas R. Sullivan, that plaintiff George De Veau, had been convicted of a felony in New York County, and were further advised as to the provisions of Section 8 of the Waterfront Commission Act (McKinney's Unconsolidated Laws, Section 6400 WW).

(3) Denies information sufficient to form a belief as to each and every allegation contained in paragraph 8 of the complaint except admits that plaintiff, George De Veau, and one William Ellershamp were indicted by the Grand Jury of New York County on a charge of Grand Larceny in the First Degree and Criminally Receiving Property in

the First Degree and that thereafter on February 27th, 1922, plaintiff, George De Veau, plead guilty in the Court of General Sessions to the crime of Attempted Grand Larceny in the First Degree and that on the 5th day of April, 1922 plaintiff, George De Veau, received a suspended sentence and was placed on probation for 5 years.

[fol. 31] (4) Denies information sufficient to form a belief as to each and every allegation contained in paragraphs 9, 10, 12, 13 and 14 of the complaint.

(5) Denies each and every allegation contained in paragraphs 15, 16, 17, 18 and 19 of the complaint.

Wherefore, the defendant, John M. Braisted, Jr., as District Attorney of the County of Richmond, demands judgment dismissing the complaint and demands judgment declaring that plaintiff, George De Veau, has been convicted of a felony within the meaning and contemplation of Section 8 of the Waterfront Commission Act and that Local 1346 of the International Longshoremen's Association (Ind.) is a labor organization within the meaning and contemplation of said Section 8 and that Section 8 of the Waterfront Commission Act is not violative of Section 7 of the National Labor Relations Act, together with the cost and disbursements of this action.

John M. Braisted, Jr., District Attorney, County of Richmond, Atty. for Deft., Office & Post Office Address, County Court House, Staten Island 1, New York.

(Verified February 7, 1957.)

[fol. 32]

IN SUPREME COURT OF NEW YORK

COUNTY OF RICHMOND

OPINION OF CRANE, J.—Dated September 5, 1957

This is an Article 78 proceeding which turns solely upon the question whether or not an officer of a waterfront union who pleaded guilty to a felony and received a suspended sentence, is to be considered convicted within the meaning

of the term as it is used in Section 8 of Part III of the Waterfront Commission Act. (New York Laws, 1953, c. 882, 883; McKinney's Unconsolidated Laws, Section 6700-ww). In substance, this section provides that a union representing waterfront employees cannot collect dues from its membership if an officer or agent of such labor organization has been convicted of a felony.

Plaintiffs seek relief by way of an injunction to restrain the district attorney of the County of Richmond from enforcing Section 8 of the above Act. The defendant district attorney, supported by the Waterfront Commission as amicus curiae, cross-moves to dismiss the complaint, or in the alternative, for judgment on the pleadings in that the complaint fails to state facts sufficient to constitute a cause of action.

The gravamen of the complaint is predicated upon the following undisputed facts. Plaintiff, De Veau, an officer of plaintiff, Local 1346 of the International Longshoremen's Association, plead guilty to attempted grand larceny in the first degree in the Court of General Sessions, New York City, in 1922. The crime was then, and now is, a felony. Following his plea of guilty, the court suspended sentence. Acting upon the complaint of the Waterfront Commission of New York Harbor, the defendant district attorney notified the plaintiff union that as long as De Veau remained [fol. 33] in its employ as an agent, the union was forbidden by section 8 of the Waterfront Commission Act to collect dues. The union suspended De Veau. The plaintiffs contend that without De Veau as an officer, the ability of the union to act as a collective bargaining representative is impaired and that because of his removal, De Veau, himself, is damaged financially and otherwise.

Plaintiffs assert, first, that the provisions of section 8 of Part III of the Waterfront Commission Act are void because this section is in direct conflict with section 7 of the National Labor Relations Act, as amended, and secondly, that a plea of guilty to a felony, followed by a suspension of sentence, does not constitute a conviction within the meaning of the term as it is used in section 8 of the act. This section reads as follows:

"Collection of Funds for Unions Having Officers or Agents Who Are Felons. No person shall solicit, collect or receive any dues, assessments, levies, fines or contributions within the state from employees registered or licensed pursuant to the provisions of this act for or on behalf of any labor organization representing any such employees, if any officer or agent of such organization has been convicted by a court of the United States, or any state or territory thereof, of a felony unless he has been subsequently pardoned therefor by the governor or other appropriate authority of the state or jurisdiction in which such convention was had or has received a certificate of good conduct from the [fol. 34] board of parole pursuant to the provisions of the executive law to remove the disability. As used in this section, the term 'labor organization' shall mean and include any organization which exists and is constituted for the purpose in whole or in part of collective bargaining, or of dealing with employers, concerning grievances, terms and conditions of employment, or of other mutual aid or protection; but it shall not include a federation or congress of labor organizations organized on a national or international basis even though one of its constituent labor organizations may represent persons so registered or licensed."

Section 7 of the National Labor Relations Act, as amended, provides:

"Right of Employees as to Organization, Collective Bargaining, etc. "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title."

The plaintiffs' contentions with respect to the constitutional aspects of this case are no longer novel. These arguments have been advanced by the plaintiffs on many [fol. 35] occasions and in a variety of forums. As a result, a number of decisions hold, and uniformly so, that section 8 of the Act is not in conflict with section 7 of the National Labor Relations Act (*I. L. A. et al.* v. *Hogan*, 3 Misc., 2d, 893, October, 1956, Supreme Court, Special Term, New York County, Hecht, J.; *Hazelton* v. *Murray*, 1956, 21 N. J., 115; *S. I. Loaders* v. *Waterfront Comm'n*, 117 Fed. Supp., 308, aff'd 347 U. S., 439; *Bradley* v. *Waterfront Comm'n*, 130 Fed. Supp., 303).

In *I. L. A. et al.* v. *Hogan* (cited *supra*), upon almost identical facts and issues, and with only one change among the principals cast as parties, Mr. Justice Hecht held, and this court agrees, that the limitation imposed by section 8 of the Waterfront Commission Act on the right of the union to collect dues is not in conflict, constitutional or otherwise, with any of the rights granted to collective bargaining agents under section 7 of the National Labor Relations Act.

However, the plaintiffs argue that unlike the *Hogan* case, where the plaintiff Schultz was an appointed agent, plaintiff De Veau herein, was elected to union office. This distinction between the cases is insufficient to create a difference. Were this distinction accepted by this court, it would merely serve to defeat the statutory intent, not further it. Section 8 refers without qualification to "any officer or agent." This statutory phrase is absolute in its sweep. To shear elected union officials from its operation would be to nullify in one stroke much of the effect of the section itself, as well as to be inconsistent with the broad nature of the plan established by the act to control crime and corruption on the waterfront.

[fol. 36] The plaintiffs' remaining contention that the use of the term "conviction" in section 8 of the Act does not apply to De Veau is also without merit.

An examination of section 8, whether standing alone, or as part of the entire text of the Act, makes the plaintiffs' position untenable. The section is both explicit as to those whom it includes and comprehensive as to the manner of

their treatment. The meaning of the term "conviction" in this section is consonant with its use as it is found elsewhere in the Act.

Significantly, section 8, even when taken by itself, presents a well ordered plan to curb corruption on the waterfront by the effective means of depriving a union of access to revenue where its officers or agents have been convicted of crime, unless the person in question has received a governmental pardon or a certificate of good conduct from the parole board acting under the Executive Law. The imposition of a suspended sentence, following a plea of guilty to a felony, is not the equivalent of a governmental pardon or a certificate of good conduct, the available relief to a conviction so precisely enumerated in the statute.

The New York State Crime Commission in its Fourth Report (Leg. Doc. No. 70, 1953), was keenly aware of the realities of venality and hoodlumism in the waterfront when it exposed many union officials as often arrested but seldom convicted. Thus, in discussing the *Harold Bowers* case as one among many, the commission found:

> (b) Harold Bowers was appointed by Ryan as an ILA organizer for the North River area in July, 1951. [fol. 37] Bowers, alias Frank Donald, has been arrested on four occasions charged with such offenses as robbery, possession of a gun, grand larceny (twice) and congregating with known criminals (Ex. 45). Bowers still continues both as a paid organizer and as a financial secretary (2230). Dominick Genova, a former member of Local 824, testified that Harold Bowers was a member of the gang in control of the upper North River piers headed by Harold's cousin, Michael (Mickey) Bowers, a convicted bank robber (2153-2154)." Page 21.

The Waterfront Commission Act, itself, reflects concern with the known waterfront racketeers who escaped conviction. To quote from the summary of the Waterfront Commission Act, prepared by the representatives of the State Crime Commission of New York and New Jersey, the Port of New York Authority and the Governor's offices of New York and New Jersey:

"In the light of the Crime Commission's disclosures of the activities of known waterfront gangsters who have so far escaped being convicted of crime, provision has been inserted to permit the Commission to deny registration as a longshoreman, whose presence on the piers to other waterfront terminals in the port of New York district is found by the Commission on the basis of facts and evidence before it, to constitute a danger to the public peace or safety" (Supplement to McKinney's Unconsolidated Laws, page 56).

[fol. 38] Thus, where the Legislature, by investigation and by statute, has expressed such rightful concern with known individuals who have escaped conviction so often despite their frequent skirmishes with the law, a plea of guilty followed by suspended sentence, rightfully must be considered a conviction. To hold otherwise would be to confer benefits where none was intended.

Examining other sections of the act, it is clear that a conviction is not negated, nor its effect nullified, because it is followed by a suspended sentence. On the contrary, whenever the Legislature used the term "conviction" in the act, and with it, the phrase, "suspension of sentence," the terms, as so used, constitutes the equivalent of punishment, not its abrogation.

Thus, to be eligible to work, a pier superintendent, hiring agent and stevedore, who has been convicted of a particular crime, must prove his good behavior over a five-year period, measured either from the date of the actual termination of the sentence, or the payment of a fine, or the suspension of sentence (sec. 6700-ee-ff).

As so used, the suspension of sentence is equated with punishment, whether it be the actual termination of sentence or the payment of a fine. It is fair to assume that the Legislature did not intend to impose one standard upon stevedores, hiring agents and pier superintendents, and another upon union officers and agents. If such were the case, it would be reasonable to suppose that the more stringent standards would fall upon the union officers and agents or those who, as the Crime Commission found, acted in a fiduciary relationship and held a position of trust and

responsibility with unlimited access to the funds of the [fol. 39] membership and no effective methods of accountability.

In further support of its position, the plaintiffs urge that in *People* v. *Fabian* (192 N. Y., 443), the Court of Appeals held that a plea of guilty to a felony, followed by a suspended sentence, did not constitute a judgment of conviction which would bar the right to vote. The plaintiffs also rely upon such cases as *People ex rel. La Placa* v. *Murphy* (277 N. Y., 581), where the court held in a memorandum opinion that there was no conviction as a fourth felony offender within the meaning of the Baumes Law because a sentence previously imposed as a third felony offender was followed by the suspension of the execution thereof. To the same effect: *People ex rel. Marcley* v. *Lawes* (254 N. Y., 249).

These cases adhere to the general rule as stated in *Richetti* v. *N. Y. Board of Parole* (300 N. Y., 357, 360):

> "We have had occasion to point out that the word 'conviction' is of equivocal meaning and that the use of the term may vary with the particular statute involved. It presents a question of legislative intent."

These decisions, and others which follow them, are strong authority for the plaintiffs' position. However, the Court of Appeals has taken an opposite course, holding elsewhere that one who is guilty of a felony, and who receives a suspended sentence, nevertheless stands convicted.

Thus, in a leading case *Weinrib* v. *Beier* (294 N. Y., 628, motion to reargue denied, 295 N. Y., 657), the petitioner, a dentist, pleaded guilty to a felony and received a sus- [fol. 40] pended sentence. Under the Education Law his license to practice dentistry was thereupon canceled upon the ground that he had been convicted of a felony. The Court of Appeals held that although he had received a suspended sentence, he, in fact, had been convicted within the meaning of the statute, and hence, his license had been properly revoked.

The court stated, and it is instructive to quote at length:

> "We have presented to us the problem of deciding the meaning of the words 'convicted of felony' in that

particular section of the Education Law. It has been said "that the question whether the word "conviction" in any particular statute shall be taken to include a suspended sentence, is one of legislative intention' (*People ex rel. Marcley* v. *Lawes*, 254 N. Y., 249, 254). Again, we have said in *People* v. *Fabian* (192 N. Y., 443, 449): 'This use of the term "convicted," with varying meanings, even in the same statute, and extending right down to the immediate present, certainly demonstrates that there is no fixed signification which the courts are bound to adopt, and leaves us the utmost freedom of inquiry as to what was intended when the legislature was empowered to disfranchise convicted citizens.' "We have, upon occasion, interpreted the word 'conviction' to mean a verdict or plea of guilt. *Matter of Lewis* v. *Carter*, (220 N. Y., 8), where in construing Prison Law, section 211, we said (p. 16): 'The word "convicted" or "conviction" is of equivocal [fol. 41] meaning. It may mean the adjudication of guilt whether by plea, finding or verdict. It may mean the adjudication and the judgment or sentence.' See, also, *People ex rel. Spurio* v. *Foster* (293 N. Y., 820) construing section 219 of the Correction Law. In a disciplinary proceeding against a member of a profession, where the latter confesses in open court by formal plea of guilt the commission of a felony, it seems to us that the Legislature clearly intended that such plea constituted conviction of a felony, even though probation followed rather than commitment to prison" (p. 631-2).

Under the foregoing reasoning, the purpose of the statute does much to determine the meaning of its terms, and to resolve areas of ambiguity which may arise in their use. Thus, where the Legislature has failed to specify that a suspended sentence following a plea or verdict of guilty, constitutes a conviction, and a defendant stands facing a long term of imprisonment, the defendant cannot rightfully be expected to suffer the loss of his liberty as a consequence of the Legislature's silence. Appropriately then, the Legislature, when it irrevocably deprives an individual

of a basic right, such as his freedom, or denies him the equally fundamental right to vote, must do so by terms explicit. Omission is not enough.

In contrast, where a dentist, or one similarly situated, loses his license to practice, although obviously, this is a serious result, the privilege lost is no more than incidental. His license to function in this one particular field, a right given to him by the state, is now withdrawn because of [fol. 42] his own misconduct. His ability to earn a living has been narrowed but not terminated (see *Barsky* v. *Board of Regents, &c.*, 305 N. Y., 89, aff'd 347 U. S. 442).

In connection with the above distinction, the opinion of the attorney-general for 1950, at page 110 states:

> "All of the other statutes mentioned in your inquiry fall in an area between the *Fabian* and *Weinrib* cases in which there has been no specific determination * * *. The Legislature has furnished no guide to its intention by using in all cases the same bare words 'convicted' or 'conviction,' as were construed differently in the *Fabian* and *Weinrib* cases. None of the statutes now under consideration involves a professional pursuit, but each of them requires the effective grant of a license from the State as a condition of the privilege of engaging in regulated occupations or activities ranging from that of Notary Public to Insurance Adjuster. Disability upon felony conviction is a disqualifying or disciplinary factor in each. For these reasons, I believe that the rule of the *Weinrib* case is applicable, rather than the *Fabian* case which insisted upon a technical judgment of conviction before loss of one of the rights of citizenship would ensue" (p. 112).

Upon a careful evaluation of the competing considerations, including particularly the nature and background of the Waterfront Commission Act itself, it is clear that the *Weinrib* decision, and not the *Fabian* case, applies here. [fol. 43] The state is not required to obtain a technical judgment of conviction in order to deny individuals in professional fields or other occupations from continuing in their particular livelihood (Medicine, Education Law, sec. 6502; Dentistry, id., sec. 6613, subdiv. 12; Nursing, id., sec.

6911, subdivision 1(e); Podiatry, id., sec. 7011, subdiv. 1(a); Optometry, id., sec. 7108, subdiv. 1; Engineering and Surveying, id., sec. 7210, subdiv. 1(e); Architecture, id., sec. 7308, subdiv. 1(e); Certified Public Accounting, id., sec. 7406, subdiv. 1(c)).

Such is the case here, and plaintiff De Veau, as one convicted within the meaning of section 8 of the act, loses his right to act as a union officer.

This decision holding section 8 of the act constitutional, and De Veau convicted within its meaning, does not leave him without recourse. The statute itself provides channels for relief, and the plaintiff is free to pursue them before the proper authorities.

Accordingly, the plaintiffs' application for an injunction pendente lite together with the plaintiffs' cross-motion for judgment on the pleadings, is denied. The defendant's motion for judgment dismissing the complaint and for judgment on the pleadings in his favor is granted.

Settle order on notice.

Crane, J.

[fol. 44] Stipulation Waiving Certification (omitted in printing).

[fol. 45]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF RICHMOND

[Title omitted]

NOTICE OF APPEAL TO THE COURT OF APPEALS

September 23, 1958

Sirs:

Please take notice that the above-named plaintiffs hereby appeal to the Court of Appeals from the judgment entered upon the order of the Appellate Division of the Supreme Court, for the Second Department, which judgment was entered in the Office of the Clerk of the County of Richmond on or about the 23rd day of September, 1958, which order unanimously affirmed the final order of the Special Term of

the Supreme Court, Richmond County, entered in the Office of the Clerk of Richmond County on the 27th day of Sep-
[fol. 46] tember, 1957 and said plaintiffs appeal from each and every part of said judgment as well as the whole thereof. This appeal is taken as of right on the ground that there is directly involved the construction of the Constitution of the State and of the United States.

Dated: New York, N. Y., September 23rd, 1958.

Yours, etc.

Thomas W. Gleason, Attorney for Appellants, 80 Broad Street, New York 4, N. Y.

To: John M. Braisted, Jr., District Attorney, Richmond County, Attorney for Respondent, Court House, Staten Island 1, N. Y.

Augustine B. Casey, Esq., County Clerk, Richmond County.

[fol. 47]

IN NEW YORK SUPREME COURT

APPELLATE DIVISION—SECOND DEPARTMENT

Present: Hon. Gerald Nolan, Presiding Justice, Hon. Henry G. Wenzel, Jr., Hon. Henry L. Ughetta, Hon. James T. Hallinan, Hon. Philip M. Kleinfeld, Justices.

Order on Appeal from Order.

GEORGE DE VEAU, DANIEL LOWERY and DAVID HONAN, individually and as members of Local 1346 of the International Longshoremen's Association (Ind.) and on behalf of all other members of Local 1346 of the International Longshoremen's Association (Ind.), Appellants,

vs.

JOHN M. BRAISTED, JR., as District Attorney of Richmond County, Respondent.

ORDER OF AFFIRMANCE OF APPELLATE DIVISION—May 12, 1958

The above named George De Veau, Daniel Lowery and David Honan, individually and as members of Local 1346 [fol. 48] of the International Longshoremen's Association (Ind.) and on behalf of all other members of Local 1346 of the International Longshoremen's Association (Ind.), the plaintiffs in this action, having appealed to the Appellate Division of the Supreme Court from an order of the Supreme Court entered in the office of the Clerk of the County of Richmond on the 27th day of September, 1957 denying plaintiffs' motions for an injunction and for judgment on the pleadings and granting defendant's cross-motion to dismiss the complaint and for judgment on the pleadings herein, and the said appeal having been argued by Mr. Arthur J. Cilento, of Counsel for the appellants, argued by Mr. Thomas R. Sullivan, Assistant District Attorney, of Counsel for the respondent, submitted by Mr. Robert J. Mozer, of Counsel for the Waterfront Commission of New York Harbor, *amicus curiae*, and submitted by Mr. Edward L. Sadowsky, of Counsel for New York Civil Liberties Union, *amicus curiae*, and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, heretofore filed:

It is Ordered that the order so appealed from be and the same hereby is unanimously affirmed.

Enter:

John J. Callahan, Clerk.

Certificate under seal made by John J. Callahan, Clerk, that the foregoing is a copy of the order entered in his office May 12, 1958.

[fol. 49]

IN SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF RICHMOND

GEORGE DE VEAU, DANIEL LOWERY and DAVID HONAN, individually and as members of Local 1346 of the International Longshoremen's Association (Ind.) and on behalf of all other members of Local 1346 of the International Longshoremen's Association (Ind.), Plaintiffs-Appellants,

against

JOHN M. BRAISTED, JR., as District Attorney of Richmond County, Defendant-Respondent.

JUDGMENT OF AFFIRMANCE, APPEALED FROM—Entered September 23, 1958

The above-named George De Veau, Daniel Lowery and David Honan, individually and as members of Local 1346 of the International Longshoremen's Association (Ind.), and on behalf of all other members of Local 1346 of the International Longshoremen's Association (Ind.) the plaintiffs in this action, having appealed to the Appellate Division of the Supreme Court from an order of the Supreme Court entered in the office of the Clerk of the County of Richmond on the 27th day of September, 1957 denying plaintiffs' motions for an injunction and for judgment on the pleadings and granting defendant's cross-motion to [fol. 50] dismiss the complaint and for judgment on the pleadings herein, and the said appeal having been argued by Mr. Arthur J. Celento, of Counsel for the appellants, argued by Mr. Thomas R. Sullivan, Assistant District Attorney, of Counsel for the respondent, submitted by Mr. Robert J. Mozer, of Counsel for the Waterfront Commission of New York Harbor, *amicus curiae*, and submitted by Mr. Edward L. Sadowsky, of Counsel for New York Civil Liberties Union, *amicus curiae*, and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, heretofore filed, the Appellate

Division having made an order unanimously affirming the order appealed from, a certified copy of which order was filed in the Office of the Clerk of Richmond County on May 22, 1958, it is

Adjudged, that the order so appealed from be and the same is in all things unanimously affirmed and that the defendant have judgment on the pleadings and that the complaint of the plaintiffs be and the same is hereby dismissed.

Judgment signed and entered this 23rd day of September, 1958.

Augustine B. Casey, Clerk.

[fol. 51]

IN NEW YORK SUPREME COURT

APPELLATE DIVISION—SECOND DEPARTMENT

OPINION OF APPELLATE DIVISION

(Reported in 174 N. Y. S. (2) 596)

Present: Nolan, P. J.; Wenzel, Ughetta, Hallinan and Kleinfeld, JJ.

Wenzel, J.—

Appellants challenge the validity of section 8 of the Waterfront Commission Act (Laws of 1953, chap. 882, as amended), McK. Unconsol. Laws, §6700-AA et seq., the interpretation thereof by respondent, and the action taken by him based thereon which led to the dismissal of appellant De Veau as secretary-treasurer of the labor union known as Local 1346 of the International Longshoremen's Association (Ind), hereinafter referred to as the local. De Veau and his two co-appellants brought this action in their individual capacities and as members of the local, and on behalf of all other members of the local seeking a declaratory judgment and injunctive relief.

So far as material, section 8 McK. Unconsol. Laws, §6700-WW states that "No person shall solicit, collect or receive any dues, assessments, levies, fines or contributions

within the state from employees registered or licensed pursuant to the provisions of this act for or on behalf of any labor organization representing any such employees, if any officer or agent of such organization has been convicted by a court of the United States, or any state or territory thereof, of a felony unless he has been subsequently pardoned therefor by the governor or other appropriate authority of the state or jurisdiction in which such conviction was had or has received a certificate of good conduct from the board of parole pursuant to the provisions of the executive law to remove the disability."

[fol. 52] According to the complaint, De Veau had been secretary-treasurer of the local for some time up to January 17, 1957, and was on that day suspended from his office by the president of the parent organization of the local (the parent organization shall hereafter be referred to as the ILA) because of a threat by a certain assistant district attorney in respondent's office that he would commence a prosecution based on section 8 and a conviction of De Veau in 1922 in the Court of General Sessions in the County of New York of the crime of attempted grand larceny in the first degree which conviction was had upon De Veau's plea of guilty. The complaint further alleges that De Veau received a suspended sentence and was "paroled" [sic] for five years; that he complied with the conditions of the "parole" [sic]; that he was last re-elected to his said office in 1955, prior to the said action taken by the president of ILA, and the membership of the local re-elected him at that time with knowledge of his said 1922 conviction; that his services as an agent of the local are valuable to the local, and that he himself has been damaged by the termination of his employment in that he was deprived of his right to continue in the employment and has lost certain substantial welfare benefits and pension rights.

Respondent admits in his answer that the assistant district attorney in question advised the president and other ILA representatives of De Veau's said conviction and of the provisions of section 8.

Appellants' contentions are that section 8 is violative of the Constitution of the United States; that it is void because it conflicts with the National Labor Relations Act

(U. S. Code, title 29, secs. 151 et seq.), particularly section [fol. 53] 7 thereof, and that the 1922 conviction is not a conviction within the intendment of section 8 in view of the fact that sentence had been suspended and therefore no judgment of conviction was rendered.

In limine, disposition must be made of respondent's argument that the court does not have jurisdiction of this action. The remedy of an action for a declaratory judgment (Civil Practice Act, sec. 473) "is applicable in cases where a constitutional question is involved or the legality or meaning of a statute is in question and no question of fact is involved" (Dun & Bradstreet v. City of N. Y., 276 N. Y. 198, 206), 11 N. E. 2nd 728, 732. Of course, there must be a real controversy, involving substantial legal interests, and the defendant must be in a position to place the plaintiff's rights in jeopardy (22 Carmody-Wait on New York Practice, pp. 713-717). Resort to this remedy and also to that of an injunction may be had even with respect to penal statutes and against a public official or public agency whose duty it is to conduct appropriate prosecutions if the purpose be to avoid irreparable injury and if the sole question is one of law (Reed v. Littleton, 275 N. Y. 150, 9 N. E. 2nd 814; Mills Novelty Co. v. Sunderman, 266 N. Y. 32, 193 N. E. 541; New York Foreign Trade Zone Operators v. State Liquor Authority, 285 N. Y. 272, 34 N. E. 2nd 316; Aerated Products Co. of Buffalo v. Godfrey, 263 App. Div. 685, 35 N. Y. S. 2nd 124, rev'd on other grounds, 290 N. Y. 92, 48 N. E. 2nd 275). One of the very purposes of a declaratory judgment is to settle a serious question of law as to the validity of a statute which would be the basis of a threatened prosecution for crime without requiring, as a prerequisite to judicial entertainment of the question, that interested parties first commit the very acts which are involved in the dispute and thereby run the risk of such [fol. 54] prosecution (N. Y. Foreign Trade Zone Operators v. State Liquor Authority, supra, 285 N. Y. at p. 278), 34 N. E. 2nd at page 319.

In previous actions similarly brought to test the validity of this very section 8, it was recognized that the remedy of an action for declaratory judgment was appropriate (Linehan v. Waterfront Comm'n of N. Y. Harbor, 116 F.

Supp. 401, 405 [De Veau was also a plaintiff in this cited case]; Internat. Longshoremen's Ass'n. Ind., v. Hogan, 3 Misc. 2d 893) and in the case last cited, and in other cases in which the validity of all or portions of the act was attacked, it was also recognized that an action for an injunction would be a proper remedy (Staten Island Loaders v. Waterfront Comm'n of N. Y. Harbor, 117 F. Supp. 308, aff'd 347 U. S. 439; Linehan v. Waterfront Comm'n of N. Y. Harbor, D. C., 116 F. Supp. 401, 405 [De Veau was also a plaintiff in this cited case]; International Longshoremen's Ass'n, Independent v. Hogan, 3 Misc. 2nd 893, 156 N. Y. S. 2nd 512) and in the case last cited, and in other cases in which the validity of all or portions of the act was attacked, it was also recognized that an action for an injunction would be a proper remedy (Staten Island Loaders v. Waterfront Commission of New York Harbor, D. C. 117 F. Supp. 308, affirmed Linehan v. Waterfront Commission of New York Harbor, 347 U. S. 439, 74 S. Ct. 623, 98 L. ed. 826; Linehan v. Waterfront Commission of New York Harbor, D. C., 116 F. Supp. 683, affirmed 347 U. S. 439, 74 S. Ct. 623, 98 L. ed. 826; Bradley v. Waterfront Comm'n of N. Y. Harbor, 130 F. Supp. 303; O'Rourke v. Waterfront Comm'n of N. Y. Harbor, D. C., 118 F. Supp. 236).

The facts presented in the record establish ample basis for the court at least to consider the legal questions which are posed. Respondent, through the power of his office, has in effect forced De Veau's dismissal from his position. Not only has De Veau lost his executive post and certain emoluments, but the local and its members have lost him as a representative. Neither the local nor the ILA chose to challenge respondent's position and it does not appear that De Veau or anyone else has any remedy against the local or the ILA or their officials.

The question as to whether violation of section 8 is indeed a crime or offense, and whether respondent indeed could have prosecuted a violator of the section, has not [fol. 55] been raised and we do not pass on it. However, certain observations will be made hereinbelow as to that question, after first reviewing the aspects of the Waterfront Commission Act which are salient on the issues which have been raised.

The act is divided into three parts. Part I contains but one section (sec. 1). It is a restatement of a compact (the Waterfront Commission compact) which had been entered into between the States of New York and New Jersey and has been approved by the Congress (67 U. S. Stat. 541). It contains sixteen articles. Article I sets forth findings and declarations as to certain evil conditions and practices that had prevailed with respect to waterfront labor within the Port of New York district. Succeeding articles create a Waterfront Commission of New York Harbor as the agency to administer the laws regulating waterfront activities, prohibit persons from working or engaging in certain occupations (pier superintendent, hiring agent, port watchman and stevedore) without a license obtained from the commission and in another occupation (longshoreman) unless they have been included in the longshoremen's register established by the commission. Consistent with the manifest intent in section 8 to prevent the existence of any influence of convicted felons upon the waterfront, waterfront labor and related matters, these articles also provide that no such license shall be granted to a person who has been convicted of a felony, subject to a right given to the commission, where application is made for a license as pier superintendent, hiring agent or stevedore, to remove the ineligibility by reason of such conviction upon satisfactory [fol. 56] evidence that the conduct of the license applicant in question for a period of not less than five years has been such as to warrant the grant of the license, and that the five-year period "shall be measured either from the date of payment of any fine imposed upon such person or the suspension of sentence or from the date of his unrevoked release from custody by parole, commutation or termination of his sentence." Section 6700-EE. The same right to remove this ineligibility, where application is made for a license as a port watchman, was also given to the commission by subsequent legislation in section 5-j of the act (Laws of 1954, chap. 220), and by still later legislation the right to work as a checker was similarly denied to persons convicted of felony, subject to the similar power given to the commission to remove that basis of ineligibility (Laws of 1957, chap. 188). The verbiage of these provisions, that is,

the context relating to the word "convicted," is substantially the same as that in section 8, except that section 8 does not give the commission any power to remove the application of the prohibiting provisions therein and accordingly does not contain the provision regarding the measuring of any period of time from a suspension of sentence.

When the act was originally passed in 1953, Part II consisted of sections 2 to 5, inclusive, which dealt with matters respecting the administration of the commission, and Part III consisted of sections 6 to 12, inclusive, which contained further policing provisions, supplementing the compact and including the disputed section 8.

Coming back to the question of whether violation of section 8 is a crime or an offense, it should first be noted that [fol. 57] neither the section itself nor any other provision in the act states that violation of its provisions is a crime or any offense for which the violator could be prosecuted. The only provisions in the act which pertain to prosecutions, penalties and remedies for violations of the act, apart from the provisions as to revocation or suspension of licenses or removal of registration or other disciplinary action against licensees and registered persons are contained in Article XIV of section 1 and in sections 4, 5-d, 5-e and 5-f. Article XIV and section 4 by their own terms do not apply to section 8. Article XIV affords the remedy of punishment as for contempt for violation of the mandate of a subpoena to attend a hearing before the commission (subdiv. 1) states that the giving of false testimony at such hearing or the making or filing of a false or fraudulent report or statement required by the compact to be made or filed under oath is a misdemeanor (subdiv. 2) and states that violations of, or conspiracies to violate, any other provision of the compact, and certain other conduct with reference to longshoremen, shall be punishable as may be provided for by concurrent action of the Legislatures of New York and New Jersey (subdivs. 3, 4, 5). Section 4 states that violation of any of the provisions of the compact or of section 2 of the act is a misdemeanor if no other penalty is prescribed. Section 5-d states that the giving of false testimony in any investigation, interview or proceeding conducted by the commission is a misdemeanor.

Sections 5-e and 5-f give the commission civil rights to bring actions for penalties and to proceed by "mandamus, injunction or action or proceeding in lieu of prerogative writ."

[fol. 58] Disobedience of a statutory prohibition is not a crime unless some statute so prescribes (Penal Law, sec. 22; People v. Fein, 292 N. Y. 10, 14; 53 N. E. 2nd 374, 375; People v. Knapp, 206 N. Y. 373, 380-381; 99 N. E. 841, 843-844; People v. Freres, Second Dept., 1958, 5 A. D. 868, 171 N. Y. S. 2nd 274) and an act is not a crime unless the Legislature has, in addition to forbidding it, imposed a punishment for its commission (Penal Law, sec. 2, People v. Freres, supra; People v. Conti, 127 Misc. 244, 249; 216 N. Y. S. 442, 447). As has been indicated in the paragraph just above, section 8 does not provide that violation of its provisions is a crime, and the other provisions of the act which have also been discussed in that paragraph do not apply to that section. Accordingly, violation of section 8 is a crime only if made so by section 29 of the Penal Law which provides: "Where the performance of any act is prohibited by a statute, and no penalty for the violation of such statute is imposed in any statute, the doing of such act is a misdemeanor." Whether section 29 has that effect deserves immediate and serious attention by all parties interested in activities in the Port of New York district and by all parties interested in law enforcement. Their attention is invited to the following authorities which might be considered as supporting the view that section 29 has such effect (Gardner v. People, 62 N. Y. 299; Marra v. N. Y. Central & Hudson River RR., 139 App. Div. 707, 124 N. Y. Supp. 443; People v. Bogart, 3 Abb. Prac. 193) and to the following authority which might be considered as supporting the contrary view (People v. Freres, supra). As stated hereinabove, we do not pass on the question on this appeal.

We turn now to the question of the interpretation which should be given to section 8. It is the contention of appel-[fol. 59] lants that since no judgment of conviction was ever rendered against De Veau because sentence had been suspended (see People v. Shaw, 1 N. Y. 2d 30, 32, 150 N. Y. Supp. 2nd 161, 162) he has not been convicted of a felony within the contemplation of section 8.

"The word 'conviction' is of equivocal meaning" and its use in a statute "may vary with the particular statute involved. It presents a question of legislative intent" (Matter of Richetti v. New York State Board of Parole, 300 N. Y. 357, 360, 90 N. E. 2nd 893, 895; see, also, Matter of Weinrib v. Beier, 294 N. Y. 628, 64 N. E. 2nd 175; People ex rel. Marcley v. Lawes, 254 N. Y. 249, 172 N. E. 487; People v. Fabian, 192 N. Y. 443, 85 N. E. 672, 18 L. R. A., N. S. 684; Linehan v. Waterfront Comm'n of N. Y. Harbor, D. C., 116 F. Supp. 401, supra).

In People v. Fabian (supra) provisions in the State Constitution of 1894 and in the then extant Election Law, with respect to denying the right of suffrage to persons convicted of a felony, were involved and in People v. Shaw (supra) and People ex rel. Marcley v. Lawes (supra) Penal Law provisions with respect to imposing increased punishment for felonies committed by persons who had been convicted two or three times previously were involved. In these cases the word "convicted" was held not to include a conviction upon which sentence had been suspended. On the other hand, in other statutes references to convictions have been held to include convictions upon which sentence had been suspended. Such holdings were made in Matter of Lewis v. Carter (220 N. Y. 8, 115 N. E. 19) where the statute was a provision in the Prison Law (now the Correction Law) withholding power from the board of parole to release on [fol. 60] parole certain prisoners if they had a prior conviction, and in Matter of Weinrib v. Beier (supra) where the statute was a provision in the Education Law with respect to forfeiture of a license to practice dentistry if the licensee were convicted of a felony.

The theory upon which the interpretation that is favorable to the convicted person has been applied is, as reiterated in Fabian (supra, 192 N. Y. pp. 449-450, 85 N. E. at page 674), that " 'where disabilities, disqualifications and forfeiture are to follow upon a conviction, in the eye of the law, it is that condition which is evidenced by sentence and judgment; and that where sentence is suspended, and so the direct consequences of fine and imprisonment are suspended or postponed temporarily or indefinitely, so, also, the indirect consequences are likewise postponed.' "

The cases in which the interpretation unfavorable to the convicted person has been applied were based on the flat conclusion that statutes in pari materia require that interpretation (see Matter of Lewis v. Carter, supra) or that—this as to a statute which requires the disciplining of a member of a profession because of his conviction of a felony—the Legislature intended that a plea of guilty to a felony was included (see Matter of Weinrib v. Beier, supra).

In our opinion there is sufficient kinship between the barring of a member of a profession from practicing his profession and the barring (here indirectly) of a person from serving as an official of a labor union, to require us to hold that the rule in the latter instance ought to be the same as in the former, even without special indication to such effect in the pertinent statutes, that is, that a "conviction," which is the basis for the barring, includes a conviction upon which sentence has been suspended.

[fol. 61] Moreover, pertinent provisions in the Waterfront Commission Act afford affirmative evidence that this interpretation was intended by the Legislature in section 8. In the cases of pier superintendents, hiring agents, port watchmen, stevedores and checkers, the Legislature clearly indicated that "conviction" included a conviction with suspension of sentence, since it provided that the five-year period which could serve as the basis for removal of the ineligibility by reason of a conviction was to be measured, where sentence had been suspended, from the date of the suspension of sentence. The principle of ejusdem generis has apt application, there appearing to be no reason to say that the Legislature intended to use the word "conviction" in any different sense with reference to labor union officials. It would be incomprehensible to us to say that a conviction with suspended sentence was intended as a barrier to a laborer's right to work on the waterfront, but not as a barrier to a union official who by reason of his position undoubtedly would have more influence on affairs on the waterfront than the waterfront laborer.

It is, therefore, our conclusion that De Veau has been convicted of a felony within the meaning of the provisions of section 8.

Passing on to appellants' contention that section 8 is in conflict with the National Labor Relations Act (U. S. Code, title 29, secs. 151 et seq.), particularly section 7 thereof, that section, so far as pertinent, states: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing" (ibid., sec. 157). This is [fol. 62] in accordance with the stated policy of the United States, as set forth in section 1 of the National Labor Relations Act, to encourage the practice and procedure of collective bargaining and to protect "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing" (ibid., sec. 151). Incidentally, the policy of the State of New York is not to the contrary (see N. Y. Const., Art. I, sec. 17; Waterfront Comm'n Act, Art. XV, par. 1 [Laws of 1953, chap. 882, sec. 1]).

The underlying authority for a contention of this nature is the supremacy clause of the Federal Constitution (U. S. Const., Art. VI). The principle has been applied not only against state laws which are directly contrary to federal legislation, but also to state laws in a field which has been pre-empted by authorized federal legislation (see Weber v. Anheuser-Busch, 348 U. S. 468, 474-476, 75 S. Ct. 480, 99 L. ed. 546). However, before it can be said that a given field has been pre-empted by federal legislation, it must be found that "'the intention of Congress to exclude States from exercising their police power must be clearly manifested'" (International Union, U. A. W., A. F. of L., Local 232 v. Wisconsin Employment Relations Board, 336 U. S. 245, 253, 69 S. Ct. 516, 521, 93 L. ed. 651).

In the field of labor relations there has not been a pre-emption as to all activities. "Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce clause" (Weber v. Anheuser-Busch, supra, 348 U. S. at p. 480, 75 S. Ct. at page 488). There has been a pre-emption as to some areas of activity in the labor field, but those areas "are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action," but there is a difficult "penumbral area" which "can be

[fol. 63] rendered progressively clear only by the course of litigation" (Weber v. Anheuser-Busch, supra, 348 U. S. 480-481, 75 S. Ct.).

In the instant case the question as to pre-emption would not be whether Congress intended to exclude the state from directly dealing with the subject of the right to choose bargaining agents or union officials, but whether the Congress intended to go even further and to exclude the state from indirectly limiting the right of choice so that the selection would be only from among those who had not been convicted of a felony.

In our opinion there has not been such a pre-emption and, further, there is no conflict between the provisions of section 8 of the Waterfront Commission Act and section 7 of the National Labor Relations Act. We do not believe that the Congress intended to interfere with the right of states to deal with their special police problems with respect to the waterfront and to deal with them in the limited manner that the New York Legislature did in section 8. In International Longshoremen's Association, Ind. v. Hogan (3 Misc. 2d 893, 156 N. Y. S. 2d 512, supra) the same question was directly at issue and the same conclusion was reached. Similar arguments for avoidance of section 8 were made in the second Linehan case (116 F. Supp. 683, supra), in Staten Island Loaders (117 F. Supp. 308, supra), in Bradley (130 F. Supp. 303, supra) and in Hazelton v. Murray (21 N. J. 115, 121, A. 2d 1). The arguments were there rejected.

Hill v. Florida (325 U. S. 538, 65 S. Ct. 1373, 89 L. Ed. 1782), is readily distinguishable. In that case the subject Florida statute F. S. A. §447.01 et seq, required labor unions and their business agents to be licensed by a certain administrative agency of the state. Although the statute pro- [fol. 64] hibited the issuance of a business agent's license to anyone who had been convicted of a felony, it also contained other prohibitions against issuing such licenses and also certain regulations generally subjecting applicants for a license to the task of satisfying the administrative agency that they were entitled to the licenses according to certain standards. The action was by the Attorney-General of Florida to enjoin a labor union and its business agent from

operating on the ground that they had not procured licenses. The Attorney-General did not claim that the business agent had been convicted of a felony. As pointed out in International Longshoremen's Association, Ind., v. Hogan (supra, 3 Misc. 2d at p. 896, 156 N. Y. S. 2d at p. 515) Florida's statute sought "to regulate collective bargaining by licensing persons who wished to act as business agents" and "Florida did not argue that it was confronted with any special police problem other than regulating collective bargaining, while in the instant case the New York State Crime Commission clearly demonstrates a need for police power legislation directed not at collective bargaining, but at the protection of union funds."

The remaining question concerns the constitutionality of section 8. Appellants contend (1) that the terms of the section are vague and indefinite in that they may include convictions in another jurisdiction which are deemed by that other jurisdiction to be for felonies, even though the law of that jurisdiction giving criminality to the acts in question would be repugnant to the public policy of our state; (2) that the section is an ex post facto law and a bill of attainder and (3) that the section disqualifies a person from holding union office without benefit of judicial [fol. 65] trial or hearing and without affording him an opportunity to show his fitness for the position. An amicus curiae asserts that the section unreasonably interferes with De Veau's right to work, in violation of section 6 of Article I of the State Constitution and of the Fourteenth Amendment of the Federal Constitution.

The constitutionality of the Waterfront Commission Act has previously been upheld in several decisions (Staten Island Loaders v. Waterfront Comm'n of N. Y. Harbor, D. C. 117 F. Supp. 308, aff'd 347 U. S. 439, 74 S. Ct. 623, 98 supra; Linehan v. Waterfront Comm'n of N. Y. Harbor, D. C. 116 F. Supp. 683, aff'd L. Ed. 826, 347 U. S. 439, 74 S. Ct. 623, 98 L. Ed. 826, supra; Bradley v. Waterfront Comm'n of N. Y. Harbor, D. C. 130 F. Supp. 303, supra; O'Rourke v. Waterfront Comm'n of N. Y. Harbor, D. C. 118 F. Supp. 236, supra; Hazelton v. Murray, 21 N. J. 115, 121 A. 2d 1, supra; International Longshoremen's Ass'n, Ind., v. Hogan, 3 Misc. 2d 893, 156 N. Y. S. 2d 512 supra).

The last two cases just cited dealt specifically with section 8. We perceive no reason for not following the decisions in the cases cited.

Since section 8 is valid and since De Veau's conviction is a conviction within the meaning of that section, the complaint was properly dismissed and judgment on the pleadings in favor of respondent was properly granted. It follows, of course, that the motion for an injunction pendente lite was properly denied. The order should be affirmed.

Order unanimously affirmed.

[fol. 66] Stipulation Waiving Certification of Record to the Court of Appeals (omitted in printing).

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 67]

IN COURT OF APPEALS OF THE STATE OF NEW YORK

GEORGE DE VEAU et al., individually and as Members of Local 1346 of the International Longshoremen's Association (Ind.), and on Behalf of All Other Members of Local 1346 of the International Longshoremen's Association (Ind.), Appellants,

v.

JOHN M. BRAISTED, JR., as District Attorney of Richmond County, Respondent.

OPINION—Decided February 26, 1959.

Desmond, J. Plaintiff De Veau is the elected secretary-treasurer of a local union of longshoremen and plaintiffs Lowery and Honan are members of that union. In this suit for a declaratory judgment and for an injunction plaintiffs make three main assertions. First, they say that section 8 of the Waterfront Commission Act (L. 1953, ch. 882, as amd.) is unconstitutional as being in conflict with section 7 of the National Labor Relations Act (U. S. Code, tit. 29, § 157). Second, they urged that section 8 is unconsti-

tutional as interfering with the right of employees to self-organization and collective bargaining. Third, they argue that section 8 in its prohibitions against the collection of union dues on the waterfront by a person convicted of a "felony" should be held not to apply to plaintiff De Veau because his plea of guilty in 1922 to attempted grand larceny, first degree, resulted in a suspended sentence only. The suit is brought against the District Attorney of Richmond County because that officer is, according to the complaint, threatening to prosecute under section 8 De Veau or any other officer of Local 1346, International Longshoremen's Association, who attempts to collect union dues for that organization while plaintiff De Veau continues as an officer or agent thereof.

[fol. 68] Special Term dismissed the complaint for insufficiency and ordered judgment for defendant on the pleadings, holding section 8 to be constitutionally valid and holding that within that statute's meaning plaintiff De Veau, despite the suspension of his sentence, had been "convicted" of a felony. The Appellate Division unanimously affirmed. The constitutional questions permitted plaintiffs to appeal to this court as of right (Civ. Prac. Act, § 588, subd. 1 cl. [a]).

The Waterfront Commission Act passed in 1953 (L. 1953, chs. 882, 883) put into statutory form a compact entered into between the States of New York and New Jersey and approved by the United States Congress. New Jersey enacted a substantially similar statute ([N. J.] L. 1953, ch. 202; Rev. Stat. of N. J. [1953-1954 Cum. Supp.], tit. 32, subtit. 11). Part I of the New York law contains legislative findings and declarations as to a number of bad labor conditions and practices on the Port of New York waterfront. To deal with the evils a bi-State Waterfront Commission was set up with large powers of enforcement. One of the methods adopted by the two States for ridding the waterfront of people considered responsible for the found evils was section 8 of our act (Rev. Stat. of N. J., § 32:23-80 is identical), reading in its material part as follows:

> "No person shall solicit, collect or receive any dues, assessments, levies, fines or contributions within the state from employees registered or licensed pursuant

> to the provisions of this act for or on behalf of any labor organization representing any such employees, if any officer or agent of such organization has been convicted by a court of the United States, or any state or territory thereof, of a felony unless he has been subsequently pardoned therefor by the governor or other appropriate authority of the state or jurisdiction in which such conviction was had or has received a certificate of good conduct from the board of parole pursuant to the provisions of the executive law to remove the disability."

Elsewhere in the act there are other prohibitions or restrictions against employment on certain waterfront jobs of persons convicted of crimes (see Waterfront Commission Act, pt. I, arts. V, VI, VIII, X).

Our first question of law is as to whether this State-enacted law conflicts (see *Weber* v. *Anheuser-Busch*, 348 U. S. 468) with section 7 of the Federal Taft-Hartley Act (U. S. Code, tit. 29, § 157) and is thus invalid under the Supremacy Clause (U. S. Const., art. VI, § 2). Section 7 of the Federal act reads thus:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain [fol. 69] collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

Plaintiffs say that section 7 of the Federal law is so complete a pre-emption of the particular field that no room is left for any State action which, like section 8 of the New York act, puts limits on the right of employees engaged like plaintiffs in interstate commerce to "bargain collectively through representatives of their own choosing." The

ready answer is that Congress has not by any language in section 7 "clearly manifested" or manifested at all an "intention to exclude States from exercising their police power" (see *Auto Workers* v. *Wisconsin Bd.*, 336 U. S. 245, 253). Any doubt as to this seems to have been removed by *Hotel Employees* v. *Sax Enterprises* (358 U. S. 270). The New York Legislature acted on information in the report submitted to it in 1953 by the New York State Crime Commission (see N. Y. Legis. Doc., 1953, No. 70) and in a number of other official reports and surveys as to the connection between unsavory waterfront conditions and the records of some officers as to waterfront crimes (see Justice BRENNAN's description in *Hazelton* v. *Murray*, 21 N. J. 115, 120-123). And, of course, besides the legislative findings there is a presumption of adequate inquiry and determination by the Legislature of the weight and significance of all the material presented to it (see *East New York Sav. Bank.* v. *Hahn*, 293 N. Y. 622, affd. 326 U. S. 230). New York State, therefore, to deal with existing crime and disorder exercised its police power in a not unusual way by barring from certain occupations persons with criminal court records (see, as other examples of such legislation, Education Law, §§ 6502, 6613, subd. 12; § 6911, subd. 1, par. e; § 7011, subd. 1, par. a; § 7108, subd. 1; § 7210, subd. 1, par. e; § 7308, subd. 1, par. e; § 7406, subd. 1, cl. [c]; and see *Matter of Barsky* v. *Board of Regents*, 305 N. Y. 89, affd. 347 U. S. 442).

This brief examination of the Waterfront Commission Act and its purposes sufficiently rebuts all plaintiffs' charges of unconstitutionality. A considerable list of other decisions, impressive for their unanimity, have upheld this legislation against similar attacks (*Linehan* v. *Waterfront Comm.*, 116 F. Supp. 683; *Staten Is. Loaders* v. *Waterfront Comm.*, 117 F. Supp. 308, both affd. 347 U. S. 439; *Bradley* v. *Water-*
[fol. 70] *front Comm.*, 130 F. Supp. 303; *Matter of Local 824* v. *Waterfront Comm.*, 7 A D 2d 630; *Hazelton* v. *Murray*, 21 N. J. 115, *supra*; *International Longshoremen's Assn.* v. *Hogan*, 3 Misc 2d 893).

The remaining question is whether plaintiff De Veau was, when he received a suspended sentence on a felony charge many years ago, "convicted" of that felony within

the meaning of section 8. The question is one of legislative intent, as we pointed out in *Matter of Weinrib* v. *Beier* (294 N. Y. 628) and *Matter of Richetti* v. *New York State Bd. of Parole* (300 N. Y. 357). In those two instances we found indications that in the two statutes involved (Education Law, § 1311, and Correction Law, § 242) the Legislature intended the word "conviction" or "convicted" to include a suspended sentence (and see *Matter of Shapiro* and *Matter of Siegel*, 6 A D 2d 866, motion for leave to appeal denied 5 N. Y. 2d 707, 708). A similar intent is readily discovered as to section 8 of the Waterfront Commission Act. The act, as we have pointed out above, contains separate prohibitions against the licensing or hiring in various waterfront occupations of persons (other than union officials) "convicted of crimes. These bans against licensing are, however, lifted when the convicted person submits evidence to the commission that his conduct has been good for a period of five years. That five-year period is measured (see Waterfront Commission Act, pt. I, art. V) from the date of "suspension of sentence" when sentence has been suspended. Thus, the Legislature in other parts of the Waterfront Commission Act itself clearly had in mind that some of the persons who fell under its license prohibitions might have been "convicted" in the sense only of having received suspended sentences. We conclude that the legislative purpose was to bar from waterfront union positions all persons with felony records even though never subjected to actual imprisonment or fine.

Our rejection of plaintiff De Veau's complaint is not based on any holding that he has failed to exhaust his "administrative remedies". It is said that he should have applied to the Parole Board for a "certificate of good conduct" (Executive Law, § 242) since the section 8 prohibition does not apply to one who after conviction has received such a certificate. But since the granting of such a certificate by the Parole Board would be an act of grace and discretion and not of duty or right, we hold that plaintiff could test the constitutionality of the statute without first applying for such a certificate.

The judgment should be affirmed, without costs.

Chief Judge Conway and Judges Dye, Fuld, Froessel, Van Voorhis and Burke concur.

Judgment affirmed.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 71] Triple Certificate to foregoing opinion (omitted in printing).

[fol. 72]

IN COURT OF APPEALS OF THE STATE OF NEW YORK

No. 318.

GEORGE DEVEAU, & ORS., individually and as members of Local 1346 of the International Longshoremen's Association (Ind.), and on behalf of all other members of Local 1346 of the International Longshoremen's Association (Ind.), Appellants,

vs.

JOHN M. BRAISTED, JR., as District Attorney of Richmond County, Respondent.

REMITTITUR—February 26, 1959

Be It Remembered, That on the 22nd day of October in the year of our Lord one thousand nine hundred and fifty-eight, George De Veau, & ors., individually and as members of Local 1346 of the International Longshoremen's Association (Ind.) and on behalf of all other members of Local 1346 of the International Longshoremen's Association (Ind.) the appellants in this cause, came here unto the Court of Appeals, by Thomas W. Gleason, their attorney—, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the Second Judicial Department.

And John M. Braisted, Jr., as District Attorney of Richmond County, the respondent— in said cause, afterwards appeared in said Court of Appeals in person.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 73] Whereupon, The said Court of Appeals having heard this cause argued by Mr. Thomas W. Gleason, of counsel for the appellants, and by Mr. Thomas R. Sullivan, of counsel for the respondent briefs filed by amici curiae, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed without costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, without costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Raymond J. Cannon, Clerk of the Court of Appeals of the State of New York.

Clerks' Certificates to foregoing paper (omitted in printing).

[fol. 74]

IN SUPREME COURT OF NEW YORK

COUNTY OF RICHMOND

Present: Hon. James C. Crane, Justice.

GEORGE DE VEAU, et al., Plaintiffs,

—against—

JOHN M. BRAISTED, JR., as District Attorney of Richmond County, Defendant.

ORDER MAKING THE ORDER AND JUDGMENT OF THE COURT OF APPEALS THE ORDER AND JUDGMENT OF THE SUPREME COURT —March 16, 1959

The above named plaintiffs having appealed to the Court of Appeals of the State of New York from the judgment of affirmance of this Court entered upon the order of the Appellate Division of the Supreme Court, Second Judicial Department, in the Office of the Clerk of the County of Richmond on the 23rd day of September, 1958 affirming the judgment in favor of the defendant and against the plaintiffs heretofore entered herein in the Office of the said Clerk on the 27th day of September, 1957 granting judgment in favor of the defendant and against the plaintiffs and from each and every part of said judgment of affirmance and order of affirmance as well as from the whole thereof; and the said appeal having been duly argued at the said Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the said judgment so appealed from as aforesaid be affirmed and judgment entered for the defendant without costs and having ordered and adjudged that the proceedings therein be remitted to this Supreme Court there to be proceeded upon according to law;

Now on reading and filing the remittitur from the said Court of Appeals herein, and upon motion of John M. [fol. 75] Braisted, Jr. District Attorney of Richmond County, the defendant herein, it is hereby

Ordered that the order and judgment of the said Court of Appeals be and the same hereby are made the order and judgment of this Court.

Enter,

James C. Crane, County Judge of Richmond County, Assigned to the Supreme Court in and for the County of Richmond.

Granted March 16th, 1959, Augustine B. Casey, Clerk.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 76] Affidavit of service (omitted in printing).

[fol. 77]

IN THE SUPREME COURT OF NEW YORK

COUNTY OF RICHMOND

GEORGE DE VEAU, et al., Plaintiffs,

—against—

JOHN M. BRAISTED, JR., as District Attorney of Richmond County, Defendant.

JUDGMENT ON REMITTITUR—March 16, 1959

The above named plaintiffs having appealed to the Court of Appeals of the State of New York from the judgment of affirmance of this Court entered upon the order of the Appellate Division of the Supreme Court, Second Judicial Department in the office of the Clerk of the County of Richmond on the 23rd day of September, 1958 affirming the judgment in favor of the defendant and against the plaintiffs heretofore entered herein in the office of the said Clerk on the 27th day of September, 1957 in favor of the defendant and against the plaintiffs and from each and every part of said judgment and affirmance and order of affirmance as well as from the whole thereof; and the said appeal having been duly argued at the said Court of Ap-

peals and after due deliberation the Court of Appeals having ordered and adjudged that the judgment so appealed from be affirmed and judgment rendered for the defendant without costs, and having further ordered and adjudged that the proceedings herein be remitted to this Supreme Court there to be proceeded upon according to law; and the remittitur from the said Court of Appeals having been filed herein, and the order having been entered herein making the order and judgment of the said Court of Appeals the order and judgment of this Court;

Now on motion of John M. Braisted, Jr., District Attorney of Richmond County, the defendant herein, it is hereby

[fol. 78] Ordered and Adjudged that the order and judgment of said Court of Appeals be and the same hereby are made the order and judgment of this Court, and it is further

Ordered and Adjudged that the said judgment entered herein on the 27th day of September, 1957, be and the same hereby is affirmed.

Judgment signed and entered this 16th day of March, 1959.

Augustine B. Casey, Clerk of the County of Richmond.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 81]

In Court of Appeals of State of New York

[Title omitted]

Notice of Motion to Amend Remittitur—April 29, 1959

Sir:

Please Take Notice, that upon the affidavit of Thomas W. Gleason, sworn to the 30th day of April, 1959, the Undersigned will move this Court on the 11th day of May, 1959, at 2:00 o'clock in the afternoon of that day or as soon thereafter as counsel can be heard, to amend its remittitur in the above action to certify that a question under the Constitu-

tion of the United States was presented and necessarily passed upon by the Court of Appeals, viz: whether Section 8 of the Waterfront Commission Act on its face and as applied to the appellant, George DeVeau, deprived him of his right to due process of law under the Fourteenth Amendment of the Constitution of the United States and that said question was decided adversely to the appellants.

Dated: New York, N. Y., April 29, 1959.

Yours, etc.

Thomas W. Gleason, Attorney for Appellant, Office & P. O. Address, 80 Broad Street, New York 4, N. Y.

To: John M. Braisted, Jr., District Attorney of Richmond County, Office & P. O. Address, County Courthouse, St. George, Staten Island.

[fol. 82]
State of New York,
County of New York, *ss.*:

AFFIDAVIT OF THOMAS W. GLEASON

Thomas W. Gleason, being duly sworn, deposes and says:

I am the attorney for the appellants and I make this affidavit in support of a motion to amend the remittitur to certify that the question of due process under the Constitution of the United States was presented, necessarily passed upon by this Court and decided adversely to the appellants.

This appeal was decided February 26th, 1959; the judgment was entered on the 16th day of March, 1959 and the remittitur was filed in the Clerk's office of the County of Richmond on the 16th day of March, 1959.

The purpose of this motion is to preserve appellants' rights to appeal on a question which was apparently decided by this Court but to which no specific reference was made. While the Court in the first paragraph of its opinion clearly indicates that questions under the Federal Constitution were raised, it makes no specific mention of due process.

The issue of due process under the Fourteenth Amendment was raised and decided in the Court below. (Record on Appeal, fols. 192-195). It was raised in this Court by [fol. 83] appellants in Point II of their brief; and it was the sole point raised in this Court by the New York Civil Liberties Union as *amicus curiae*. It was vigorously contested by respondent in Point II of his brief.

It would seem that this Court had due process in mind in the last paragraph of its opinion where it held that the remedy afforded by Section 8 of the Waterfront Commission Act is an act of grace and one of discretion rather than a duty or right. Moreover, at paragraph 3 of its unrevised and uncorrected opinion, the Court stated:

> "New York State, therefore, to deal with existing crime and disorder exercised its police power in a not unusual way by barring from certain occupations persons with criminal court records (see, as other examples of such legislation, Education Law, Sections 6502, 6613, subd. 12; Section 6911, subd. 1e; Section 7011, subd. 1a; Section 7108, subd. 1; Section 7210, subd. 1e; Section 7308, subd. 1e; Section 7406, subd. 1c; and see *Matter of Barsky* v. *Board of Regents*, 305, N. Y. 89, affd. 347 U. S. 442."

This too, would clearly seem to be a reference to the due process issue. However, since "due process" is not explicitly mentioned in the opinion, this motion seeks to avoid any possible ambiguity.

Wherefore, your affiant prays that the remittitur be amended as aforesaid.

Thomas W. Gleason

Sworn to before me this 30th day of April, 1959.

Julius Miller, Notary Public, State of New York, No. 31-2709850, Qualified in New York County, Commission Expires March 30, 1961.

Clerk's Certificate to foregoing papers (omitted in printing).

[fol. 84]

IN COURT OF APPEALS OF STATE OF NEW YORK

Present, Hon. Albert Conway, Chief Judge, presiding.

Mo. No. 277

GEORGE DE VEAU, et al., Appellants,

vs.

JOHN M. BRAISTED, JR., as District Attorney of Richmond County, Respondent.

ORDER DENYING MOTION TO AMEND REMITTITUR—
May 14, 1959

A motion to amend the remittitur in the above cause having been heretofore made upon the part of the appellants herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is denied upon the ground that the opinion in this Court shows that upon the appeal federal questions were presented and necessarily passed upon.

Gearon Kimball, Deputy Clerk.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 85]

IN COURT OF APPEALS OF THE STATE OF NEW YORK

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed March 26, 1959

I. Notice is hereby given that George De Veau, the appellant above named hereby appeals to the Supreme Court of the United States from the final order and judgment of the Court of Appeals, which affirmed the order and judgment of the Appellate Division of the Supreme Court, Second Department, which affirmed the order and judgment of the Supreme Court of the State of New York, County of Richmond upholding the validity and constitutionality of Section 8 of the Waterfront Commission Act (Laws of 1953, ch. 882, as amended), entered in this action on February 26, 1959.

This appeal is taken pursuant to 28 U. S. C. Section 1257 (2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Notice of Appeal to the Supreme Court of the United States.

2. Opinion of the Court of Appeals.

3. Order and Judgment of Affirmance of the Court of Appeals.

4. Notice of Appeal to the Court of Appeals.

[fol. 86] 5. Order of Affirmance of Appellate Division.

6. Opinion of Appellate Division.

7. Notice of Appeal to the Appellate Division.

8. Order Appealed From.

9. Opinion of Crane, J.

10. Plaintiffs' Order to Show Cause.

11. Summons.

12. Complaint.

13. Affidavit of George De Veau.

14. Affidavit of Thomas W. Gleason.

15. Defendant's Notice of Cross-Motion to Dismiss Complaint or in the Alternative, for Judgment on the Pleadings.

16. Answer.

III. The following questions are presented by the appeal:

1. Whether Section 8 of the Waterfront Commission Act (Laws of 1953, ch. 882, as amended), violates the Constitution of the United States, Amendment 14, Section 1, in that it deprives appellant of liberty and property without due process of law.

2. Whether Section 8 of the Waterfront Commission Act (Laws of 1953, ch. 882, as amended), violates the Constitution of the United States, Article I, Section 10, Clause 1 in that it constitutes a bill of attainder and an ex post facto law.

3. Whether Section 8 of the Waterfront Commission Act (Laws of 1953, ch. 882, as amended), violates the Constitution of the United States, Article VI, Clause 2, in that it is repugnant to the laws of the United States specifically U. S. C. 29, Section 151, et seq. better known as the "Labor management Relation Act, 1947," said Labor Management Relations Act having preempted Section 8 of said Waterfront Commission Act.

Thomas W. Gleason, Attorney for George De Veau, Appellant, 80 Broad Street, New York 4, New York.

[fol. 87] Proof of Service (omitted in printing).

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 90]

SUPREME COURT OF THE UNITED STATES

No. 71, October Term, 1959

GEORGE DE VEAU, Appellant,

vs.

JOHN M. BRAISTED, JR., as District Attorney of Richmond County.

Appeal from the Court of Appeals of the State of New York.

ORDER NOTING PROBABLE JURISDICTION—October 12, 1959

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.